

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK



JEWELL A. BUSSEY,  
Plaintiff,

v.

T. MILLER, K. SIGNOR, LT. ALAN  
GARDNER, K. ECTOR, T. FULLER,  
D. LYNCH, and DRAGONETTE,

Defendants.

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**DECISION AND ORDER**  
16-CV-82-A

This *pro se* civil rights case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1) for the conduct of pretrial proceedings. On July 1, 2020, Magistrate Judge Foschio filed a Report and Recommendation and Decision and Order (Dkt. No. 120), recommending that defendants' motion for summary judgment (Dkt. No. 97) be granted, and that plaintiff's motion to appoint counsel (Dkt. No. 119) be denied as moot.

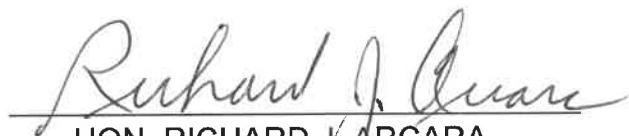
No timely objections to the Report and Recommendation have been filed. No timely request for reconsideration of denial of the motion to appoint counsel has been filed. The Court notes that some of the grounds for plaintiff Bussey's motion to appoint counsel are potentially grounds for the Court to have construed that *pro se* motion as a request for an extension of time. See Dkt. 119. However, upon review of the Report and Recommendation and the underlying record, it is hereby

**ORDERED**, pursuant to 28 U.S.C. § 636(b)(1) and as is stated in the Report and Recommendation and Decision and Order, defendants' motion for summary judgment (Dkt. No. 97) is granted on the ground that plaintiff failed to exhaust available

administrative remedies. The Court also concludes that, even if plaintiff's motion to appoint counsel is construed as a request for additional time to file objections to the Report and Recommendation because of difficulties he has experienced due to the COVID-19 pandemic and the loss of some of his personal legal materials, the Court would deny the request as futile because the plaintiff failed to exhaust available administrative remedies.

The Clerk shall close the case.

**IT IS SO ORDERED.**



HON. RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: August 12, 2020